the time and place where it is alleged to have been committed, was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence:

Provided that —

(i) .....

(ii) the requirements of this section shall in every case be deemed to have been complied with unless and until the contrary is proved."

In this case there is the evidence of Inspector Abdul Rahman that he had effected service of the notice of intended prosecution on the respondent. There was therefore a compliance with one of the two requirements under section 56, viz. service of the notice on the respondent. The learned President however took the view that the notice was invalidated by the Inspector informing the respondent that it was a notice of prosecution for "any offence". In this he was wrong as, to my mind, what the Inspector told the respondent is irrelevant. Section 56 speaks only of the service of the notice of intended prosecution, not of any obligation to explain the contents of the notice to the respondent.

It was argued by counsel for the respondent that P5 which was only a copy of the notice was inadmissible in evidence because of the failure to comply with section 66 of the Evidence Ordinance, as no notice had been given to the respondent to produce the original. In my opinion, this is a case where such notice to produce could be dispensed with. All that was necessary was for the prosecution to establish service of notice on the respondent of intended prosecution for an offence indicated in P5. The onus would then be on the defence to prove that the requirement of section 56 had not been complied with.

The appeal is allowed, the order of acquittal set aside and the case is remitted to the Sessions Court for the President to deal with it according to law.

Appeal allowed.

Solicitors: *Shook Lin & Bok.*

TEE CHIN YONG v. ERNEST JEFF

[O.C.J. (Ismail Khan J.) February 18, 1963]

[Seremban — Civil Suit No. 45 of 1962]

Land law — Agreement for sale of portion of land — Specific performance — Whether purchaser has caveatable interest — Whether portion of land caveatable.

The plaintiff lodged caveats against a certain portion of two pieces of land owned by the defendant in which he claimed to have an interest by virtue of an agreement for sale. The Registrar of Titles served a notice on the plaintiff requiring him to withdraw the caveats within 21 days and that after the lapse of such time the caveats would be removed and their discharge recorded.

The plaintiff applied for an order to extend the caveats until the disposal of a suit for specific performance on the agreement for sale.

Held: (1) a person claiming an interest in a specific portion of a piece of land is not entitled to lodge a caveat over the whole of the land;

(2) therefore, the caveats being partially invalid, such invalidity rendered those caveats wholly null and void and of no effect.

Cases referred to:—

(1) *Chin Cheng Hong* v. *Hameed & Ors.* [1954] M.L.J. 169.

(2) *Haji Abdul Rahman* v. *Mohamed Hassan* [1917] A.C. 209; F.M.S.L.R.

(3) *In re Registration of Caveat* (1908) Innes 114.

SUMMONS - IN - CHAMBERS adjourned into Open Court.

G. T. S. Sidhu for the plaintiff.

N. A. Marjoribanks for the defendant.

Ismail Khan J.: This is a Summons-in-Chambers which has been adjourned into Open Court for argument. The plaintiff is suing the defendant for specific performance of an agreement for the sale to him of a portion of the land comprised in Certificate of Title No. 1205 (now 5612) and Certificate of Title No. 1380 (now 5613), Seremban Town, District of Seremban, Negri Sembilan, registered in the name of the defendant. The plaintiff had lodged a caveat against each of the lands claiming an interest in them by virtue of the said agreement. On the 11th day of January, 1963, the plaintiff was served with a notice requiring that the caveats be withdrawn within twenty-one days and stating that after the lapse of the twenty-one days the Registrar of Titles would remove the said caveats and record their discharge unless he should have been previously served with an Order of Court extending the time.

The plaintiff's application is for an order that the caveats be extended until the disposal of the suit. The relevant section of the Land Code is section 166 which reads:—

"The grantor of any instrument of trust or a beneficiary or a guardian or next friend of any minor beneficiary or a trustee or any person claiming title to or registrable interest in land may present a caveat to the effect that such land shall not be transferred, charged or leased by the proprietor either:

(a) absolutely, or

(b) except in such manner and to such extent as in such caveat may be expressed, or

(c) until notice shall have been served on the caveator, or

(d) unless the transfer, charge, or lease be expressed to be subject to the claim of the caveator as expressed in such caveat, or

(e) except subject to any conditions expressed in such caveat."

Mr. Marjoribanks for the defendant submitted that the plaintiff had no registrable interest in the lands and that he could not therefore present any caveats. In support of these submissions he referred me to two cases, both unreported, viz.: (1) Selangor Originating Summons No. 140 of 1954 — *Official Assignee* v. *Madam Chan Kam Lin;* (2) Penang Civil Suit No. 192 of 1959 (S.C. 74/59) — *Gan Eng Boon* v. *Johore Farms and Plantations Ltd.*

In the first case it was held by Wilson J. that an agreement for sale of land did not give the purchaser any registrable interest in the land

and that he was therefore not entitled to file a caveat. The same view was taken by Neal J. in the other case, although it would appear that his decision turned on the wording of section 63 of the Johore Land Enactment which differs from the equivalent provision in the F.M.S. Land Code in one important respect and that is the provision in section 63 of the said Enactment that every attempt shall be null and void and of no effect.

For the plaintiff it was contended by Mr. Tara Singh that he had an interest in the land arising out of his contract which gave him the right to enter a caveat. He relied on the case of *Chin Cheng Hong* v. *Hameed & Ors.* [1], a Court of Appeal case. In this case both Mathew C.J. and Buhagiar J. held that an agreement to sell land was non-registrable and did not create any interest in the land. The learned Chief Justice found it unnecessary to consider whether such an agreement created a caveatable interest. Buhagiar J. however proceeded to say of such an agreement that:—

> "It passes no actual interest in the land that can be called an equitable estate in the ordinary sense, but an equitable interest of a contractual nature under the instrument consisting of a right to be registered as the owner of the interest purported to be conferred by the instrument (*vide* Hogg, *Registration of Titles to Land*, p. 116). As Lord Dunedin stated in *Haji Abdul Rahman* v. *Mohamed Hassan* [2]: 'The agreement is valueless as a transfer or burdening instrument, but it is good as a contract.' This contractual right may be sufficient to give a person an 'interest' in the land for the purposes of protection by restrictive entry in the register; the claim to an interest in land arising out of the contract is sufficient to make it a caveatable interest and to support a caveat (*In re Registration of Caveat* [3]). The whole system of caveats is founded on the principle that they exist for the protection of alleged as well as proved interests and of interests that have not yet become actual interests in land, but a caveat, being in the nature of a statutory injunction, does not in itself make a claim or right either better or worse."

Wilson J. said he had nothing to add to the judgments of the other two members of the Court. In a subsequent case to which reference has been made, Wilson J. however held there was no caveatable interest under such agreement.

The observation of Buhagiar J. is purely *obiter*, but in Perak Civil Appeal No. 16 of 1959 — *Sellamah d/o Marimuthu* v. *Registrar of Titles*, Perak, (unreported) — Smith J. appeared to have adopted it, when he held that there was no difference between an option to purchase within a certain period and a contract to purchase and that such an option created a caveatable interest.

The cases abovementioned show that there has been a wide divergence of opinion over the years; however, I do not think it is necessary for me to enter the arena in support of one view or the other. In my view, the question before me can be readily answered by determining whether or not a person claiming an interest in a specific portion of a piece of land — assuming without deciding whether his interest is a caveatable interest — is entitled under the Land Code to lodge a caveat over the whole of the land. It is quite clear that in respect of the remaining portion of the land he is not entitled to lodge any caveat whatsoever. I do not think that a caveat is divisible in the same way that certain clauses in a contract may in proper circumstances be severable from the rest. Therefore, if the caveats lodged by the plaintiff were partially invalid such invalidity renders those caveats wholly null and void and of no effect. They should not have been registered in the first place because the Registrar of Titles had no authority outside the four walls of the Land Code. In registering the caveats he was acting in a purely ministerial capacity and the mere fact of registration cannot validate what was invalid.

I accordingly declare the two caveats to be void and of no effect. It follows that the application must be dismissed with costs.

Application dismissed.

Solicitors: *Murphy & Dunbar; Lovelace & Hastings.*

CHIU NANG HONG v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) January 24, 1963]

[K.L. — F.M. Criminal Appeal No. 44 of 1962]

Criminal Law — Rape — Penal Code, s.376 — Consent given by woman — Consent obtained by threat of physical injury — Testimony of woman uncorroborated — Propriety of convicting on such testimony — Nature of warning which judge must direct to himself in such circumstances.

Criminal Evidence — Rape — Uncorroborated testimony — Propriety of convicting on such testimony.

If sexual intercourse with a woman is with her consent but "her consent has been obtained by putting her in fear of death or hurt" then the act amounts to rape.

It is a rule of prudence that in cases of rape it is unsafe to convict on the uncorroborated testimony of the woman. There is no rule of law against a conviction on such evidence, but in every case a caution as to the possible danger of such a course should be administered to the trier of fact. In the case of a jury it must be administered in clear and suitable terms. In the case of a judge the question whether he has administered it to himself or not is to be decided on an examination of his approach to the question as a whole.

Observations on judicial powers.

COURT OF APPEAL (CRIMINAL).

R. Ramani (*M. S. Naidu* with him) for the appellant.

H. S. Ong (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This appellant was convicted before Ong J. for rape in contravention of section 376 of the Penal Code and sentenced to eighteen months' imprisonment. Against that conviction and sentence he has now appealed.

The appellant is a piano dealer and the prosecutrix is a married woman, aged 28, who has been married for 9 years and has 3 children.

At this stage it is not in question, and at the trial it was admitted, that during the morning of 10th May, 1962, at premises in Lorong